

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
vs.  
VIKTOR KOZENY and FREDERIC  
BOURKE, JR.,  
Defendants.

X  
: Renewed Petition Of Landlocked Shipping  
Company And Dr. Jitka Chvatik For An  
: Order Terminating the Post-Indictment  
Restraining Order  
:  
05 CR 518 (SAS)  
  
X

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Petitioners Landlocked Shipping Company and Dr. Jitka Chvatik petitioned the Court on April 6, 2011 to terminate the Restraining Order issued on February 13, 2009. After full briefing by Petitioners and the Government, the Court issued its Opinion and Order, dated April 29, 2011, denying the Petition without prejudice and stating:

Petitioners argue the Restraining Order should be terminated without any further proceedings, if the Government's appeal to the Privy Council is denied, the legal effect of which would permanently bar Kozeny's extradition to the United States. Apparently, the Government agrees with Petitioners on this point, stating as follows: 'If it is determined that Kozeny cannot be extradited to face the charges in the Indictment, the Restraining Order should be terminated at that time.' Thus, barring any procedural requirements to termination, the Restraining Order will be automatically terminated if the Privy Council decides against the Government and affirms the Bahamian courts' rulings against extradition.

(Order at 12-13, dkt. #284).

The Privy Council issued its Judgment on March 28, 2012. (A copy of the Judgment is attached as Exhibit A) The Privy Council decided against the Government. It held that it had no jurisdiction to entertain the appeal from the Court of Appeals of the Commonwealth of the Bahamas' decision because the Court of Appeals released Kozeny when it decided the charges in the Indictment upon which the Government requested extradition were not offenses for which

extradition lies under the pertinent treaty. (A copy of the Court of Appeals decision is attached as Exhibit B). The Privy Council went on to opine, consistent with the Bahamian Court of Appeals' decision, that the offenses on which the Government had requested Kozeny's extradition, namely FCPA and money laundering offenses, were not offenses upon which extradition can be granted. (Ex. A, Judgment at 16-21) As a result of the Privy Council's judgment, the decision of the Bahamian Court of Appeals stands as the final judgment that Kozeny cannot be extradited to stand trial on the Indictment.

Following issuance of the Privy Council's judgment and consistent with the Government's representations to the Court cited in the Court's Opinion and Order, on March 29, 2012 Petitioners' counsel by email and letter requested that the Government file an appropriate motion to terminate the Restraining Order. (A copy of counsel's email and letter are attached as Exhibit C) The Government has not responded to the request, thus necessitating Petitioners' renewal of their Petition for an order terminating the Restraining Order in accordance with the Court's April 29, 2011 Opinion and Order.

For these reasons, Petitioners respectfully request that the Court enter an Order terminating the Restraining Order.

Respectfully submitted,

By: s/James E. Nesland  
James E. Nesland (JN-2306)

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## CERTIFICATE OF SERVICE

I, James E. Nesland, hereby certify that on April 9, 2012 I caused to be served a true and correct copy of the foregoing **Petition Of Landlocked Shipping Company And Dr. Jitka Chvatik For Termination Of Post-Indictment Restraining Order And Return Of Restrained Funds Or, Alternatively, For An Immediate Hearing To Adjudicate Petitioners' Ownership Of Restrained Funds**, upon the parties listed below via the Court's ECF system, as well as by placing copy in the United States Mail, postage prepaid, addressed to:

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By: s/Lydia T. VanDenBroek